

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 122 OF 1999

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and
2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. Appellants.

Versus

Sudesh Anant Raicar,
r/o. Palolem, Canacona Goa. Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondents.

COAM : A.P. LAVANDE, J.

DATE : APRIL 15, 2005.

ORAL JUDGMENT :

The appellants challenge Judgment and Award dated 8.7.1999, passed by the Additional District Judge III (South) Margao in Land Acquisition Case No. 147/95. By Notification dated 24.7.1991,

issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as 'the Act'), the Government acquired large chunks of lands, situated at Nagarcem-Palolem in Canacona Taluka. An area of 840 sq. metres bearing Survey No.196/2 which was a paddy field and an area of 1600 sq. metres bearing Survey No.196/9 which was a bharad land were part of the acquired lands. The Special Land Acquisition Officer awarded Rs.9/- per sq. metre for the paddy field and Rs.17/- for the bharad land. The reference Court enhanced the compensation at the rate of Rs.26/- per sq. metre, relying on the sale deeds of the lands acquired which were purchased about a year back. The paddy field was purchased by Sale Deed dated 7.6.1990 at the rate of Rs.23.80 per sq. metre and the bharad land was purchased by a Sale Deed dated 18.4.1990 at the rate of Rs.25/- per sq. metre.

2. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court at the rate of Rs.26/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of the acquired lands ?

3. Mr. Afonso, learned Counsel appearing for the appellants submitted that this Court in number of appeals has fixed the Rs.19/- per sq. metre, relying upon the earlier Award dated 15th March, compensation in respect of the paddy fields acquired by the same

Notification at the rate of 1989 and, therefore, the compensation awarded at the rate of Rs.26/- per sq. metre cannot be upheld. The learned Counsel further submitted that the reference Court could not have relied upon the sale deeds although they were in respect of very same lands which were acquired. The learned Counsel submitted that there was absolutely no justification for the reference Court to enhance the compensation awarded by the Special Land Acquisition Officer. Mr. Afonso further submitted that the reference Court could not have awarded increase of 10 % per year on the basis of the price mentioned in the sale deeds taking the price mentioned in the sale deeds, as the basis. The learned Counsel further submitted that the reference Court ought to have adjusted the fruit value of Rs.15,075/- and wood value of Rs.9403/- awarded by the Special Land Acquisition Officer, against the entire compensation payable, since the acquired lands were purchased for the prices mentioned in the sale deeds along with the trees existing therein.

4. Per contra, Mr. Kamat, learned Counsel appearing for the respondent submitted that since the sale deeds were in respect of the very same lands which were purchased about a year before the Government issued Notification under Section 4 of the Act, the reference Court was absolutely justified in relying upon the sale deeds. The learned Counsel further submitted that since the sale deeds were in

respect of the very same lands which were acquired, the reference Court was absolutely justified in relying upon the consideration mentioned in the sale deeds, more particularly having regard to the fact that the appellants herein had not thrown any challenge to the said sale deeds.

5. I have considered the submissions made by the learned Counsel appearing for the parties. I am unable to accept the submission of Mr. Afonso that the respondent ought to be awarded Rs.19/- per sq. metre in respect of the paddy field, on the basis of the Awards passed by this Court in other appeals arising under the same notification. It is settled law that each case has to be decided on the basis of the evidence led in that particular case. In the present case, land bearing Survey No.196/2 was purchased at the rate of Rs.23.80 per sq. metre by Sale Deed dated 7.6.1990 and as such, in the absence of any challenge by the appellants to the said sale deed before the reference Court, the consideration mentioned in the said sale deed can be taken as fair market value of the said land. Therefore, the value of the acquired land bearing Survey No.196/2 can be taken as 23.80 per sq. metre in the year 1990.

6. In so far as increase of 10 % per year granted by the reference Court is concerned, I have already held in number of connected appeals that having regard to the fact that the acquired land is a paddy field and

situated at Nagarcem-Palolem in Canacona Taluka and also having regard to the fact that there is absolutely no evidence led about any development around the acquired lands in the preceding years of acquisition, increase of 5 % and not 10 % per year would be justified. In the present case also, I hold that the respondent should be given the same benefit and accordingly, the compensation payable in respect of the paddy field, comes to Rs.24.99 per sq. metre. I deem it appropriate to round it up to Rs.25/- . Accordingly, the compensation payable in respect of the paddy field bearing Survey No.196/2 is fixed at Rs.25/- per sq. metre.

7. In so far as the land bearing Survey No.196/9, which was a bharad land and it was purchased by Sale Deed dated 18.4.1990 at the rate of Rs.25/- per sq. metre, the reference Court is justified in fixing the compensation at the rate of Rs.26/- per sq. metre considering the fact that the land was acquired after about one year of its purchase. Accordingly, the compensation payable in respect of the bharad land bearing Survey No. 196/9 is fixed at Rs.26/- per sq. metre.

8. In so far as the submission of Mr. Afonso that the compensation of Rs.15,075/- and Rs.9403/- , awarded by the Special Land Acquisition Officer towards fruit and wood value respectively has to be adjusted against the total compensation is concerned, I find

considerable force in the submission of the learned Counsel. The learned Counsel appearing for the respondent has not disputed this position. I, therefore, hold also find that the total compensation of Rs.24,478/- awarded towards the fruit value and wood value has to be adjusted against the total compensation payable, since the respondent had purchased the acquired land along with the trees existing therein. There was no question of awarding the compensation in respect of the fruit value and the wood value in addition to the market value of the acquired land. Therefore, the amount of Rs.24,478/- is ordered to be adjusted against the total compensation payable to the respondent.

9. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the paddy field is fixed at Rs.25/- per sq. metre and the compensation in respect of the bharad land is fixed at Rs.26/- per sq. metre. The compensation of Rs.24,478/- shall be adjusted towards the total compensation payable to the respondent.

Having regard to the facts and circumstances of the case, the parties are directed to bear there owns costs.

A.P. LAVANDE, J.

ssm.